

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

Docket No. 193,156

ORDER

Respondent appeals from a November 8, 1994, Preliminary Order granting temporary total disability and medical benefits.

ISSUES

In its application for review, respondent asks the Appeals Board to consider whether claimant has proven she suffered an accidental injury arising out of and in the course of her employment. At the preliminary hearing respondent also argued claimant had not given timely notice. However, the Application for Review does not list the notice issue and respondent did not submit a brief. The Appeals Board, therefore, assumes the only issue to be considered is the issue listed on the Application for Review, i.e. whether claimant suffered accidental injury arising out of and in the course of her employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and the brief submitted by the claimant the Appeals Board finds that claimant has proven by a preponderance of credible evidence that she did suffer accidental injury arising out of and in the course of her employment with the respondent.

Claimant testified that although she had previously experienced problems in both arms, primarily the left, the condition worsened in July 1991. She attributed the increased symptoms to an increase in the workload during a period when the hospital was short of help. She testified that she worked hard and fast and started suffering cramping in her arm. She described it as "like getting spasms" in her arm. She mentioned the problem to her employer and filled out a form with a heading that indicated it is to be used for job

injuries. She testified that the condition continued to worsen until she was taken off work July 21, 1991. She completed the injury report form on this same date.

Claimant was treated by Dr. Gluck and was seen by several other physicians. Although none of the physicians gave a specific opinion about the cause of the injury, the medical history and findings appear consistent with claimant's testimony. Respondent offers no evidence to rebut claimant's testimony. The Appeals Board therefore finds that claimant more probably than not did suffer an accidental injury arising out of and in the course of her employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Order of Administrative Law Judge Nelsonna Potts Barnes dated November 8, 1994, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Edward D. Heath, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director